



A report by:
THE JOINT LEGISLATIVE STAFF
TASK FORCE ON GOVERNMENT OVERSIGHT

Prepared for:
ASSEMBLYMEMBER DENISE MORENO DUCHENY
CHAIR, ASSEMBLY BUDGET COMMITTEE

Q: *How much does the state
pay out annually for legal
settlements and judgments?*

A: *No one knows.*



A report of findings and recommendations
MARCH 1998

FINDINGS

1. The state's total general liability - the amount spent on legal judgments and settlements, not including attorney costs - remains unknown more than four years after the need for such information was identified by an outside risk management consultant retained by the state.
2. State agencies are using operation budgets to pay for settlements and judgments – a policy instituted in 1990 and intended to reduce the number of claims against the state.
3. Agencies are not required to report payments for settlements and judgments.
4. There is no centralized collection point for the tracking of payments.
5. Most individual agency departments do not maintain information on settlements and judgments.
6. The amount of operational funds spent annually by the Department of Corrections for legal claims and settlements has more than doubled since 1993 – from \$5.9 million to \$11.4 million.
7. The state has no record of the increase or decrease in the use of operating for legal judgments and settlements.

POLICY QUESTIONS

1. To what extent are state agencies using operational budgets to pay legal judgments and settlements, and does this affect their ability to provide services to the public?
2. How can we determine if the “incentive” of having agencies pay their own judgments and settlements has reduced the number of claims if there is no requirement to track payments made for judgements and settlements?
3. Has the policy of agency autonomy with respect to legal claims actually increased the likelihood of agency wrongdoing?

EXECUTIVE SUMMARY

Since 1990, it has been state policy to allow agencies to pay judgments and settlements with funds from their current year operational budgets as much as feasible. Prior to 1990 the Legislature reviewed settlement and judgment claims and appropriated money from the State General Fund to make required payments. According to staff at the Department of Finance, the Attorney General's Office, and the Legislature, this policy change was intended to encourage state agencies to reduce and prevent *tort liability claims*¹ since agencies would now be required to cover those costs out of existing agency funds. However, the Department of Finance shifted responsibility for payment to the affected agencies but did not require a centralized reporting of these payments.

Since agencies are not required to report payments, the total cost of judgments and settlements paid out by the state annually is nearly impossible to determine or review. Information on the number, type and cost of suits against the state must be collected on an individual agency-by-agency basis. There is no centralized collection point for this information and the degree to which individual departments track this data varies widely. Many departments report they have no computerized tracking system and that they rely on paper-based case files for this information. Most departments do not maintain judgment and settlement information.

In 1993, an independent risk management consultant performed an audit review in what became an unsuccessful effort to determine the total cost of claims against the state. State risk managers say "track records" would help the state reduce and control its liability costs. For example, the Department of Corrections spent \$11 million dollars from its operational budget in FY 96/97 to pay off judgments and settlements. In fact, since 1993, the Department of Corrections has spent more than \$35 million dollars of its agency operational funds to settle lawsuits and pay off court ordered judgements.

Although the Legislature makes a separate annual budget appropriation for payment of claims, settlements, and judgments against the state, this amount does not reflect the total cost of the state's actual payouts since agencies are using "other funding sources" to pay their legal liabilities. This policy of allowing legal liability payments to go unreported prohibits both the Legislature and taxpayers from knowing amount of costs incurred for claims and settlements, which agencies are paying out the most, and the most common types of lawsuits or settlements.

¹ Tort liability claim: a wrongful act, other than breach of contract, for which an injured party is seeking damages.

THE TORT LIABILITY CLAIMS PAYMENT PROCESS IN STATE GOVERNMENT

Filing a Claim

Under current law, before a lawsuit may be brought against the state, most claims must be filed with the state Board of Control (BOC) Government Claims program. The Government Claims program primarily administers two types of claims: equity claims (no law has been broken, but the State may have damaged an individual and makes payment “in equity”), and tort liability claims (a law may have been broken). Approximately five percent of the BOC’s staff and budget are allocated to the Government Claims Program; the rest of the BOC’s efforts are directed towards administration of the Victims of Crime program.

After a tort claim is denied by the Board of Control, a claimant may sue the state directly. The Board routinely denies claims that raise complex matters of fact and law and/or are more than \$50,000. In FY 95/96 the Board rejected 5,494 claims and approved 1,144 for a total payout of \$6,996,078.

Some claims are not required to be presented to the Board of Control. Tort claims against the Department of Transportation (DOT) may be filed with either the BOC or DOT. Tort claims against the University of California are not administered by the BOC and do not follow the process outlined herein. Federal civil rights cases, state employee Worker’s Compensation cases, and inverse condemnation lawsuits all may be filed originally in court. Special administrative proceedings are used for public works arbitration cases, California State University grievances, and complaints before the Fair Employment and Housing Board.

Payment of Claims

In August of 1990, the Department of Finance issued a policy memorandum that changed the judgement and settlement payment process (Appendix A). Prior to this time payments were authorized by the Legislature and paid from the State General Fund. The memorandum outlined the new requirement that agencies “...make payment of claims from within existing budgeted resources before seeking payment...” from the Legislature.

The new policy was intended to streamline the payment process and provide an incentive for agencies to reduce the number and amount of claims stemming from legal actions against the state. One of the unintended consequences of the new Department of Finance policy is that the Legislature does not, nor does any other single state agency, track the number, cost and type of payments made by the state.

There are numerous ways tort claims are paid. They may be paid directly from an agency’s budget; they may be paid from a special fund such as Budget Item #9670 which the Legislature specifically appropriates each year to cover claims; or the Legislature may approve special funding legislation when the claim amount is substantial and cannot be covered through an existing fund.

Under the current process, the Department of Finance (DOF) serves in two capacities in the settlements and judgments payment process. First, for judgments and settlements of less than \$35,000, the DOF certifies that funds are available either from the agency's budget or a special fund. Second, the DOF reviews and must approve payments for amounts more than \$35,000.

The Legislature may approve special legislation to pay for tort claims which are more than \$70,000, and which the affected agency is unable to pay out of its existing budget. The Legislature also annually appropriates \$1.2 million to the Attorney General (Budget Act Item #9670) to pay for settlements and judgments. These funds are used by the Attorney General to pay settlements and judgments that are normally less than \$35,000 and which the affected state agency is unable to cover with existing funds.

Upon certification and/or approval from the DOF, the State Controller processes claim schedules and issues payments from the appropriate fund to pay settlements and judgments against the State.

BUDGET ACT ITEM #9670

Each year the Legislature appropriates funds to Budget Act Item #9670 to pay judgments and claims against the state. The amount of this item is put forth each year in the Governor's proposed budget and, in outlining Budget Act Item #9670, the Governor's Budget states,

“To provide a comprehensive statement of statewide costs for the tort program, the format below includes a statewide display of tort-related expenditures.”

However, the amount of Budget Item #9670 has not changed significantly from year to year -- running between \$70-\$75 million -- and, according to the DOF, of the total expenditures reported in Budget Item #9670 for FY 95/96, no payments from agency appropriations were included. Anecdotal evidence such as the \$11 million dollars spent from the Department of Corrections budget appropriation suggests that the annual amount of Budget Act Item #9670 significantly underestimates the state's total costs for tort liability.

Following is a breakdown of the ways in which judgments and settlements for tort liability claims against state agencies are paid. Staff with the Attorney General's Office and DOF report that the general practice is to seek special funding from the Legislature for claims of more than \$1 million.

Amount of Claim	Source of Funds
Less than \$35,000	Agency's budget or Budget Act Item 9670 (if an AG client agency)
\$35,000-\$70,000	Agency's budget, or Budget Item 9670 (for small agencies or in cases where no agency budget funds are available)
More than \$70,000	Special legislation if agency does not have funds available from its' budget appropriation

The cost of attorneys' fees, both Attorney General counsel and private contract counsel, is not included in the cost of claims. When an agency uses outside contract counsel, the costs are frequently also paid out of operational budgets, as are the settlements and judgments. In FY 96/97, the state contracted out for approximately \$24 million in private legal services.

As much as possible, the Department of Justice, under the direction of the Attorney General (AG), represents most state agencies in litigation. In FY 95/96, the AG employed 741 attorneys at a cost of \$109 million dollars to represent state agencies in civil, criminal and public rights litigation. Additionally, individual agencies statewide employed 840 civil service attorneys to provide legal services on administrative and programmatic matters.

SAMPLE DATA FROM TWO AGENCIES

In FY 1996/97, the Department of Corrections spent more than \$22.5 million on judgments and settlements, including \$11.4 million from its operational budget. These funds were not included in the Governor's Budget as a separate item to pay for tort liability claims and were not approved by the Legislature or otherwise subject to any public review on behalf of California taxpayers.

Since 1993, Corrections has spent more than \$35 million dollars of its operating budget to settle lawsuits and pay off court-ordered judgments. Information provided by Corrections shows the increases over the last four fiscal years: \$5.9 million in FY'93-94; \$8.3 million in FY'94-95; \$9.7 million in FY'95-96 and \$11.4 million in FY'96-97.

Payments for all of the tort claims incurred by Corrections are actually much higher when the special funding appropriations and payments from the Attorney General's Tort Liability Fund are taken into account. Additionally, these figures do not include the Department's cost for attorneys' fees. For example, in FY 95/96 Corrections spent a \$12.3 million on outside counsel in addition to funds spent on legal representation by the State Attorney General.

The large sums of money spent by the Department of Corrections on legal judgments and settlements prompted the Joint Legislative Budget Committee to require the Department to provide a detailed accounting of expenditures to the committee by July 1, 1998².

² Supplemental Report of the 1997 Budget Act, 1997-98 Fiscal Year; page 49.

The Department of Transportation (DOT) handles its own litigation. Funding for tort payments are included in the DOT budget as a separate line item and reported in the Governor's Budget under item # 9670. The DOT reports that when judgements and settlements exceed the funding it has specifically set aside for this purpose, payments are made out of other DOT resources. For fiscal years 93-96, the DOT Tort Fund was budgeted at \$37.5 million. DOT reports that:

“Because of a consistent pattern for 5 years of over spending the “tort fund,” it was augmented by \$3.8 million in the 1996/97 fiscal year.....”

Task Force staff has been unable to determine the amount of funds actually expended from DOT's operational budget to pay for judgments and settlements after the \$37.5 million allocation was exceeded.

OFFICE OF RISK AND INSURANCE MANAGEMENT

Background

The risk manager is responsible for the identification and mitigation of potential losses resulting from various risks. In other states and in the private sector, risk managers determine where losses might occur and find appropriate mechanisms to eliminate or keep losses at manageable levels. Risk managers use a variety of techniques to reduce or eliminate losses including eliminating the risk, insuring against a potential risk, and transferring the liability for the risk to another party.

In the private sector, the chief financial officer and/or chief legal counsel often perform the risk manager's role, or the risk manager may report directly to them. In this capacity the risk manager is a high level member of the corporate management team. In California state government, the risk manager's role is more narrowly defined and his or her influence limited drastically in comparison.

In California, the Office of Risk and Insurance Management (ORIM) is a unit within the Department of General Services (DGS). Originally the Insurance Office, it was located within the Department of Finance and its primary function was to purchase insurance policies for the state. In 1963 when the DGS was created³, the Insurance Office was relocated from the Department of Finance to the DGS. In 1968 the Insurance Office began to offer risk management services, including administering the state's employee driver training program. Over the years the office has been assigned, for various periods of time, the administration of a variety of programs, including, the State Compensation Insurance Fund, the State Employee Deferred Compensation Plan and the State Fairs.

³ *Statutes of 1963*, Chapter 1786.

The Insurance Office was renamed the Office of Risk and Insurance Management (ORIM) to more accurately reflect the expanded responsibilities of the office and differentiate it from the Department of Insurance. ORIM's mission statement is:

To create a partnership between the Office of Risk and Insurance Management and its clients and to act as a resource for quality risk management services to State agencies and other clients. On a consistent basis, ORIM shall provide continually improving services in a responsive and knowledgeable manner which results in a high degree of customer satisfaction.

The Role of the State's Risk Manager

California's Risk Manager is Ralph Maurer who has been with ORIM since 1975. When Maurer became Chief of ORIM in 1989, he initiated two audits of the office: an internal audit by the DGS focusing on the operating procedures of the office; and an external audit of the risk management activities of ORIM.

In April of 1993, an independent risk management consultant completed the external audit. The audit made numerous recommendations for the improvement of the state's risk management activities and the performance of the ORIM. The review specifically noted that ORIM should obtain statistics on the state's general liability, including the nature and causes of losses. Mr. Maurer reports that during the course of this audit he was asked by the auditors what the state's general liability was. He replied that he did not know. The auditor reportedly responded "Well, you should, you're the state's risk manager..."

The audit also recommended that ORIM develop measures to help eliminate, reduce and control losses. Finally, the audit recommended that the administration of general liability in the state be reviewed. Subsequently, ORIM responded to these risk management recommendations by contracting with the same consultant to provide a detailed tort liability review. This review was completed August 26, 1996⁴. The consultant concluded:

- 1. The state's current system for handling tort claims is complicated and probably is confusing to persons not familiar with the process.*
- 2. It is extremely difficult, although probably not impossible, to determine the total amount that the state pays for tort liability claims because there is no central data-collection or reporting point.*
- 3. There are no statewide formalized processes for relating incidents and/or claims to the state's safety efforts.*

The basic functions of risk management require quantifiable information regarding potential losses. Essential data about the nature of the state's liability are unknown, unreported or generally unavailable to the Risk Manager, the public or the Legislature. In meetings with the Risk Manager and his staff, Mr. Maurer commented that if he were employed in the private sector he

⁴ Warren, McVeigh & Griffen, *State of California, Office of Risk Management, Tort Liability Review* (Newport Beach, August 26, 1996)

would likely be fired for his inability to provide such fundamental information about the state's general liability.

“How can I do my job if I don’t know where the risks are?” asked Mr. Maurer. “The tort liability process is desperately in need of review, it needs to be more proactive,” he added⁵.

ATTEMPTS TO CONTROL LIABILITY COSTS

The most recent effort to determine the state’s general liability, including its tort liability, occurred with the March 1997 formation of the Risk Management Advisory Committee (RMAC). The main charge of the committee is to “...assist the Office of Risk and Insurance Management (ORIM) and the Board of Control in restructuring our risk management program and controlling the costs of tort liability claims and property losses.” (Appendix B) The Department of General Services, ORIM and the BOC are further responsible for establishing a statewide database to provide RMAC with needed information and analysis. The committee is under the leadership of Anne Sheehan, Undersecretary of the State and Consumer Services Agency. The Governor requested that the committee include representatives of:

1. Attorney General’s Office
2. Department of Finance
3. Governor’s Insurance Advisor
4. Board of Control
5. Department of General Services
6. Insurance Commissioner’s Office
7. Department of Personnel Administration
8. One of the State’s Insurance Brokers
9. Department of Transportation
10. Department of Corrections
11. California State University System
12. State Treasurer’s Office

The RMAC staff and Task Force staff were concurrently and independently attempting to gather comprehensive information on the state’s general liability. Both entities have effectively given up determining the actual amount. It has been one year since the formation of RMAC and, in a recent conversation with RMAC staff, the Task Force was informed that the focus of its efforts has been redirected from determining the state’s liability costs to determining what information can be gathered in the future for a centralized management information system. The goal is for managers to use this system to implement “loss prevention policies” in order to reduce liability costs, and develop “training classes” in areas where “losses” are most prevalent. At this writing, no target date has been set for the program to be in place.

⁵ 12-11-97

CONCLUSION

The policy of state agencies using operational funds to pay legal judgments and settlements without reporting requirements prevents both the Administration and the Legislature from fully understanding the impact that these expenditures have on operating budgets as well as the factors which led to these legal liabilities. To effectively control the amount of tax money spent on tort liability suits, the Office of Risk Management should be provided the tools and ability to reduce the state's liability and costs for these claims, and the Legislature should resume its oversight role.

RECOMMENDATIONS

1. Centralize the payment of all tort liability costs by establishing a single revolving fund and requiring agencies to reimburse the fund from their budget appropriation. Agencies would seek a waiver from the Legislature if they did not have the funds available to pay. This would provide an ongoing tracking record of actual payments and provide information on which agencies have the most frequent claims and pay out the most.
2. The State Auditor, Legislative Analyst or Department of Finance should be requested to determine the extent to which state agencies use operational funds to pay the costs of judgments and settlements.
3. Require each agency to provide the appropriate budget subcommittee an estimate of the FY 96/97 and 97/98 payments made from operational budgets for claims and settlements. This will provide the Budget Committee the ability to make a more accurate determination of the amount of money that should be appropriated for FY 98/99.

Appendix A

M E M O R A N D U M

Date: AUG 2 1990

To: All Agency Secretaries
Departmental Directors
Departmental Chief Counsel

From: Department of Finance

Subject: Settlements Process

In order to facilitate the Department of Finance's review of settlements proposed by your agency, department, board, bureau or commission, we are requesting that the attached information accompany all settlement requests for \$35,000 or over whether a certification of availability of funds is requested or some other payment mechanism is proposed. Counsel should work with the Attorney General's Office with regard to any settlements under \$35,000 proposed for payment from the tort item (Item 8190).

We are asking that you pass this information on to all attorneys who handle cases which may result in a money settlement needing approval by the Department of Finance. Since this information should be readily accessible to the attorney authorized to represent the State in its legal defense, the Department of Finance would expect a minimal workload impact on legal staff.

This is the first step towards standardizing and streamlining the settlement payments process both internally in the Department of Finance and statewide. Your assistance in forwarding this information to the appropriate legal staff, both in-house and outside counsel, is greatly appreciated.

If you have any questions regarding the policy or procedures stated in this memorandum, please call Linda Frick, Deputy Director of Finance, at 445-8582. If you have any general questions regarding this memorandum, please call Carol R. Baker, Principal Program Budget Analyst, at 445-8913.


JESSE R. HUFF
Director of Finance

SETTLEMENTS PROCESS

The requested information is as follows:

Synopsis of the case: Brief, executive summary of facts, prayer, recommended/actual settlement amount;

Statement of facts: Discussion of relevant facts including both controverted and uncontroverted factual issues;

Statement of damages: Set forth the damages sought for by plaintiff along with an explanation;

Statement of law: Set forth the basic legal theories on which the State's liability is asserted;

Procedural status: Brief summary of the procedural status of the case as of the date of the settlement memorandum;

Assessment of facts/evidence: Deputy Attorney General's analysis of how the facts are likely to develop at trial and be viewed by a judge or jury (e.g., strength and weakness of witnesses); an estimate of the State's chances of winning or losing in the suit;

Assessment of damages: Deputy Attorney General's analysis of probable amount of recovery by the plaintiff, pursuant to a court verdict, including a detailed explanation of how the amount is computed, together with an explanation of the State's evidence relating to damages and a brief discussion of the extent to which there is good case law on determining the amount of such damages;

Assessment of law: Deputy Attorney General's view of the State's liability including a discussion of defense theories; precedent setting potential of the suit;

Statement of actions taken to mitigate subsequent occurrences: Explanation of what steps the affected department has taken (a copy of any report filed pursuant to Government Code Section 965.65 would suffice) or what advice the Attorney General's Office may have given the client agency to avoid or mitigate subsequent occurrences of similar tort actions;

Statement of costs: Detailed explanation as to what the settlement offer represented (e.g., compensatory damages, attorney fees and costs, structured settlement, etc.) and whether the settlement offer represents all costs associated with the case (including attorney fees and costs); identification/explanation of the interest to be assessed on the settlement and how the interest was calculated;

Statement of attorney costs: Discussion of whether the attorney fees and costs included in the settlement are subject to the Section 5.00 of the Budget Act, or are payable pursuant to federal or other State statutes (the applicable statutes should be identified);

Letter of concurrence: A copy of a letter signed by the involved State department's director or designee concurring with the Attorney General's Office recommendation should accompany the request for settlement;

Copy of draft release: A copy of the draft release which will be signed by the plaintiff should accompany the request for settlement; the draft release should describe the conditions of release from liability. Consistent with Provision 5 of Item 9670, settlements should encompass all aspects of a case, including attorney fees and court costs and reference any related judgments. Settlements should result in a full release of the State from further liability.

Department contact: Consistent with the Administration's policy, as reflected in Budget Act language in Item 9670, to the extent possible, affected agencies or departments are to make payment of claims from within existing budgeted resources before seeking payment from Budget Act Item 9670. Therefore, as a part of the request for settlement, the appropriate department designee who can discuss the fiscal options for payment of a settlement should be identified.

State of California

M E M O R A N D U M

Date: DEC 14 1990
To: All Agency Secretaries
Departmental Directors
Department Chief Counsel
From: Department of Finance
Subject: Judgments Process

The purpose of this memorandum is to clarify the state's policies regarding the payment of judgments, and to assist state agencies, departments, boards, bureaus and commissions in determining the most appropriate financial options for making such payment.* Judgments may result in monetary payments, program changes resulting in the need for funding, and federal levies against state accounts.* The Department of Finance must be involved in the development of payment options on judgments which may have a financial impact on state government, particularly in a climate of limited available state resources.

Notify and Consult

It is the responsibility of the affected state agency or department to notify the Department of Finance in a timely manner of cases which have the potential of resulting in significant costs to the state, and to work with the Department of Finance to choose the most appropriate funding option for the potential judgment. This will allow sufficient time so that options such as seeking periodic payments on judgments pursuant to Government Code Section 984 or the feasibility of a state appeal can be considered and Department of Finance input can be taken into account.

For purposes of paying judgments against the state, it is the policy of the Administration that the payor of first resort is the affected state agency or department from within their existing budgeted resources. Once the Department of Finance has determined that option is inadvisable, the following funding options can be considered:

- o Payment from Item 8190 (for judgments in tort cases up to \$70,000 only);
- o The Board of Control's omnibus claims bills (for judgments in where the Attorney General is not the attorney of record);
- o The settlement/judgments bills coordinated by the Attorney General's Office;
- o Special legislation; or
- o The "deficiency" process pursuant to Section 27.00 of the Budget Act.

*This memorandum is not intended to affect any special claims payment procedures having a unique statutory basis, such as the motor vehicle liability claims process handled by the Office of Insurance and Risk Management; the CalTrans or University of California claims processes; or claims procedures for state court awarded attorney fees pursuant to Item 9910 of the Budget Act as outlined in Budget Letter 90-09.

*Consent decrees are not initially considered judgments for payment purposes but are covered by the settlement and attorney fees memorandums.

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In order to facilitate the Department of Finance's review of the payment of judgments, we are requesting that, upon entry of the judgment and before the time has run to file an appeal, the appropriate Department of Finance analyst be provided with the information described in ATTACHMENT I of this memorandum regardless of whether payment is proposed through the certification of availability of funds process or some other payment mechanism described in this memorandum. Departments should request this information from all attorneys who handle cases which may result in significant costs to the state whether as a monetary judgment or a program change. Since this information should be readily accessible to the attorney authorized to represent the state in its legal defense, the Department of Finance would expect a minimal workload impact on legal staff.

In addition, the following are fiscal policy directives to affected state agencies and departments regarding specific types of judgments:

Consent Decrees

Consent decrees should be viewed as resulting from settlements subject to the provisions of Government Code Section 948. Affected state agencies and departments are reminded that, pursuant to Government Code Section 948, affected state agencies or departments are required to get approval from the Department of Finance prior to settling the case. Similarly, Section 27.00 of the Budget Act and general budgeting policy require that settlements/consent decrees which require program changes which then result in the need for funding (one-time or ongoing) through a current year deficiency or a request for future year funding (e.g., budget change proposal) require approval from the Department of Finance prior to settling the case. Under no circumstances should a state agency or department agree to any such settlement which then results in a consent decree without first seeking approval from the Department of Finance. For cases leading to consent decrees, affected state agencies and departments should follow the instructions regarding payment of settlements as described in a memorandum dated August 2, 1990 from the Department of Finance to all state agency secretaries, departmental directors and chief counsels.

Federal Levies Against State Bank Accounts

To the extent possible, the affected state agency or department should work with the Department of Finance well in advance of the final judgment to address other funding options in order to avoid levies against state fund reserves. In those situations where a federal court is likely to issue a "writ of execution" to enforce a judgment against the state, affected state agencies and departments and their legal counsel are reminded that consideration will be given by the Department of Finance to adjust the affected entity's budget should the "writ of execution" result in a levy of state funds.

Judgments Proposed For Payment from Budget Act Item 8190

At its discretion, the Department of Finance has delegated its authority to the Attorney General's Office to pay from Item 8190 of the Budget Act judgments that are under \$35,000. Consistent with the general policies described in this memorandum, affected state agency and department budgeted resources are considered to be the payor of first resort for the payment of such judgments. Therefore, as a part of its delegated authority from the Department of Finance, the Attorney General's Office will work with affected

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state agencies and departments to ensure that the policies regarding payment of such judgments outlined in this memorandum are followed. Additionally, settlements which are proposed for payment from Item 8190 of the Budget Act are also subject to the same payment policies described in this memorandum.

Conclusion

To the extent the policies outlined in this memorandum are not followed, consideration may be given by the Department of Finance to make any necessary adjustments to current or future state agency or departmental budgets to cover the payment of judgments from within the affected state agency or departmental budgeted resources in order to minimize or negate the effects on the reserves of the General Fund or other state funds.

This is one of the several steps being taken towards standardizing and streamlining the judgments payments process both internally in the Department of Finance and statewide. Your assistance in forwarding this information to the appropriate legal staff, both in-house and outside counsel, is greatly appreciated.

If you have any questions regarding the policy or procedures stated in this memorandum, please call Linda Frick, Deputy Director of Finance, at 445-8582. If you have any general questions regarding this memorandum, please call Terrie Tatosian, Principal Program Budget Analyst, at 445-5332.

Original signed by
JESSE R. HUFF

JESSE R. HUFF
Director of Finance

Attachment

ATTACHMENT 1

JUDGMENTS/FEDERAL LEVIES

The requested information is as follows:

Synopsis of the case: Brief, executive summary of facts describing the judgment;

Statement of facts: Discussion of relevant facts including both controverted and uncontroverted factual issues;

Statement of damages: Set forth the damages and other costs awarded against the state, including any anticipated program cost impacts or payments to courts (one-time or ongoing) required by the judgment;

Statement of law: Set forth the basic legal theories on which the state's liability is asserted;

Procedural status: Brief summary of the procedural status of the case as of the date of the judgment with particular emphasis on the feasibility of the state's appeal options, if any;

Statement of actions taken to mitigate subsequent occurrences: Explanation of what steps the affected department has taken (a copy of any report filed pursuant to Government Code Section 955.63 would suffice) or what advice the Attorney General's Office may have given the client agency to avoid or mitigate subsequent occurrences of similar tort actions;

Statement of costs: Detailed explanation as to: a) what the judgment represents (e.g., general damages, compensatory damages, court damages, etc.); b) whether the judgment represents all costs associated with the case; and c) identification/explanation of the interest to be assessed on the judgment and how the interest was calculated;

Statement of attorney costs: Discussion of whether the attorney fees will be paid on contingency from the judgment amount or from a different source, and whether payment of those fees will be handled separately. Discussion of whether the attorney fees are subject to Section 5.00 of the Budget Act (specify which federal or other state statutes that are the basis of the award of attorney fees). For attorney fees being handled separately from the judgment, the affected state agency or department, or counsel representing that entity, should refer to the claims procedures for attorney fee awards in Budget Letter 90-09 and in a memorandum which will be forthcoming shortly;

Department contact: As stated in the cover memorandum, to the extent possible, affected agencies or departments are to make payment of claims from within existing budgeted resources before seeking payment from Budget Act Item 8190 (for judgments in tort cases) or from the other options in which payment is made from state fund reserves. Therefore, as a part of the request for payment, the appropriate department designee who can discuss the fiscal options for payment of a judgment should be identified.

Appendix B



GOVERNOR'S OFFICE

MEMORANDUM

TO: Constitutional Officers
Agency Secretaries
Department Directors

FROM: Benjamin A. Haddad
Cabinet Secretary

DATE: March 10, 1997

SUBJECT: Risk Management Advisory Committee (RMAC)

PostNet brand fax transmittal memo 7571 4 pages 2	
To: Ralph Mauer	From: Haddad
Co: ORIM	Co: SCBA
Dept:	Phone:
Fax: 322-5776	Fax:

On behalf of the Governor, the Administration will form a Risk Management Advisory Committee under the leadership of Anne Sheehan, Undersecretary of the State and Consumer Services Agency. This advisory committee will assist the Office of Risk and Insurance Management (ORIM) and the Board of Control in restructuring our risk management program and controlling the costs of tort liability claims and property losses.

The State of California annually experiences significant cost arising from tort claims and property losses. However, data on these losses needs to be better reported and developed for management of the state's exposures. With the assistance of the advisory committee, we will design a comprehensive risk management model for identifying and controlling our risk and exposures. Since we are essentially self-insured, it is important that our department directors become more involved in managing and protecting our state assets and that we provide a sound and efficient funding mechanism for paying legitimate claims, when they occur.

GOVERNOR PETER WILSON • SACRAMENTO, CALIFORNIA 95814 • (916) 443-2841

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The advisory committee will provide guidance and assistance to the Undersecretary of the State and Consumer Services Agency and the state risk manager in:

- Establishing requirements for reporting of data.
- Establishing premium or other cost allocation systems.
- Determining appropriate programs and coverage for self insurance versus insurance.
- Developing excess insurance and risk retention pools.
- Preparing legislation for revisions in liability/property funding and containment of risk exposures.

I am requesting that the following agencies participate as advisory committee members:

- | | |
|-----------------------------------|--|
| • Attorney General's Office | • Department of Personnel Administration |
| • Department of Finance | • One of the state's insurance brokers |
| • Governor's Insurance Advisor | • Department of Transportation |
| • Board of Control | • Department of Corrections |
| • Department of General Services | • California State University System |
| • Insurance Commissioner's Office | • State Treasurer's Office |

The Department of General Services, Office of Risk and Insurance Management and the Board of Control will provide staff support and establish a statewide database to provide the advisory committee with needed information and analysis.

The effective management of our state's risk and loss control programs has become a priority. Please provide Ms. Sheehan with a top-level policy person to assist us in this effort.

The first RMAC meeting is scheduled for April 10, at 10 a.m. in the Leonard Carter conference room, suite 282 at 913 Capitol Mall. If you have any questions, please contact Ralph Malar of ORIM at (916) 322-8971.

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